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February 7, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: MM Docket No. 96-222;
MM Docket No. 96-221; and
MM Docket No. 92-51

Dear Mr. Caton:

On behalf of Cynthia L. McGillen and James P. McGillen, please find enclosed an original plus thirteen (13) copies of Comments filed in the above-referenced proceedings. The additional copies are being filed so that each of the Commissioners' offices can receive a copy of these Comments.

Should any further information be desired in connection with this matter, please communicate directly with this office.

Sincerely,

Vincent A Pepper

Enclosures (14)

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Broadcast Television National Ownership Rules	)	MM Docket No. 96-222
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket 92-51
	)	

COMMENTS

COMES NOW, Cynthia L. McGillen and James P. McGillen both individuals residing in the viewing area of television station KCCN-TV, Monterey, California, and hereby respectfully submit their comments in the above-referenced proceedings.

1. On May 21, 1996 Commentors filed a Petition for Emergency Relief with the Commission seeking a Commission order requiring Harron Television of Monterey, the licensee of KCCN-TV Channel 46, Monterey, California, and Ackerley Communications Group, Inc., the licensee of KCBA-TV Channel 35, Salinas, California, to terminate arrangements between the parties which consisted primarily of a Time Brokerage Agreement and Option Agreement executed April 24, 1996 giving Ackerley control of KCCN, therefore violating the Commission's television duopoly rule, 47 C.F.R. §73.3555(a)(2) and the Communications Act of 1934, as amended, 47 U.S.C. §310(d) as an unauthorized transfer of control of the license of KCCN. That Petition is still

pending before the Commission and the information contained therein is specifically relevant to the Commission's consideration of treatments of specific time brokerage agreements and is, therefore, incorporated herein by reference.

2. In its Second Further Notice of Proposed Rulemaking in MM Docket No. 91-221 the Commission stated at paragraph 88 with reference to the possible grandfathering of existing LMAs "We reserve the right, however, to invalidate an otherwise grandfathered LMA in circumstances that raise particular competition and diversity concerns, such as those that might be presented in very small markets."

3. Salinas-Monterey, California, is precisely such a small market. Its DMA ranks number 122 in the nation. The market consists of the Ackerley station, KCBA, which is a Fox affiliate; the Ackerley LMA station, KCCN, which is a CBS affiliate; KSBW-TV which is an NBC affiliate (not owned or controlled by Ackerley); and KSMS-TV, a Spanish language station affiliated with the Univision Network. Thus, Ackerley, through the KCCN-TV LMA, controls and operates two of the three English language television stations in the entire Monterey peninsula.

4. As noted in the Petition for Emergency Relief, the Option Agreement, Time Brokerage Agreement, and the statements and actions of the principals of Harron and Ackerley since the execution of those agreements, taken together, indicate that Harron and Ackerley have entered into more than a mere LMA and option transaction. Ackerley took over KCCN to such an extent that Harron was required to fire all but two of its employees (the two it is required to keep pursuant to Commission policy). The operations of KCCN have been moved to the KCBA studios in Salinas, KCCN's equip-

ment has been removed to Salinas, and at the time of the takeover, the KCCN local news casts were terminated for a six-week period. Thus, under the agreements, Ackerley has assumed effective control of two of the three English language stations in this small secondary market.

5. As a result of the Agreements, the Salinas-Monterey community, a community that is 78% cable penetrated and home to just three English language television stations, has lost one of its three valuable independent broadcast voices of local news and public service. One company - Ackerley - controls the news on all but one of the local English language stations in the Salinas-Monterey market. In addition, Ackerley's control of the inventory of two stations in a market made up of only three stations results in an extreme competitive and economic advantage for Ackerley in both the local and national marketplaces. The Time Brokerage Agreement and Option Agreement constitute a worst-case LMA and a total disservice to the Salinas-Monterey market. Allowed to stand, those agreement will effectively strip the Monterey peninsula of its only English language station and the Salinas-Monterey market of a much needed independent editorial voice.

6. Submitted herewith for consideration by the Commission is a statement by Cynthia L. McGillen which clearly demonstrates that the Commission must maintain control over the determination of which LMAs will serve the public interest and which will not. The blind grandfathering of all LMAs regardless of the impact of a particular LMA on the public interest or on the competitive and economic relationships in the market is not called for either by the Communications Act or by Commission policy.

Commentors, therefore, request that the Commission indeed do as suggested in the Notice and invalidate the Harron-Ackerley LMA as clearly constituting "circumstances that raise particular competition and diversity concerns, such as those that might be presented in very small markets."

WHEREFORE, the premises considered the Commission is urged to consider all LMAs on the merits and circumstances of the individual case and in so doing to invalidate the Harron-Ackerley LMA in the small Salinas-Monterey television market.

Respectfully submitted,

CYNTHIA L. McGILLEN
JAMES P. McGILLEN

By ____________________
Vincent A Pepper, Esq.
Attorney for Commentors

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February 7, 1997

Cynthia L. McGillen
Post Office Box 1341
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February 6, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D. C. 20554

Re: Docket No. MM96-222
Docket No. MM91-221

Dear Mr. Caton:

On April 24, 1996, Monterey, CA. lost its only English language television station. On that day the Salinas-Monterey community, a community that is 78% cable penetrated and home to just three English language television stations, lost one of its three valuable independent broadcast voices of local news and public service. One company -- Ackerley -- via KCBA, the UHF Fox affiliate, which they own, and KCCN, the UHF CBS affiliate which they control via an LMA, now controls the news on all but one of the local English language stations in the Salinas-Monterey market. In addition, Ackerley's control of the inventory of two stations in a market made up of only three stations resulted in a definite advantage for Ackerley in both the local and national marketplaces. This situation is perhaps one of the most obvious examples of the types of "multiple relationships" over which the Commission has expressed concern..

There seems to be universal agreement that LMA's were initially allowed to save failed or failing stations and to preserve independent and diverse broadcast voices within a market. In many cases LMA's have successfully not only preserved an independent voice, but expanded that voice through more and better local news, public affairs and entertainment programming. However, the situation in the Salinas-Monterey market is not one of those cases. Ackerley initially claimed they were "rescuing" KCCN and that they would do much to enhance its performance both on the air and in the community. KCCN was not in fact a "failed" station, but rather a poorly managed station. There were other bidders for KCCN, at prices above the asking sale price. The fact that Ackerley was able to offer the highest price was due in large part to the fact that upon the execution of the Time Brokerage Agreement and Option Agreement on April 24, 1996, Ackerley required Harron to immediately terminate all KCCN employees and Ackerley canceled all local newscasts effective April 24. Although some employees were eventually re-hired and newscasts were re-instated after six weeks, KCCN is under full control of KCBA (Ackerley). KCCN programming is produced at the KCBA studios in Salinas, a city miles away from the KCCN studios where Harron ostensibly retains its two employees required by Commission policy.

Ten months after the LMA was established the latest Nielsen (February '97) shows there has been no improvement in the ratings of KCCN. The station is providing one additional half hour newscast Monday through Friday, but effective January 27, 1997, KCBA has decreased by one half hour per day the news it offers Monday through Friday. The net effect is the two Ackerley stations are providing exactly the same amount of local news as prior to the LMA. The difference is that the two stations often air nearly identical stories gathered by the same reporter/cameraman, but delivered on-air by different anchors. On election night only KCCN covered election results up until 10 PM. At that time KCCN ran entertainment programming and KCBA delivered their local newscast. It appears both stations are unable to be live from the shared Salinas facility at the same time, severely limiting possible local news coverage. On January 29,1997, just two days after KCBA shortened their 10 PM newscast to 35 minutes, both KCBA and KCCN violated a court order prohibiting identification of the victims of two men sentenced to life in prison for participating in an Internet child pornography ring. (Please see attached Monterey County Herald front page story dated February 6). This is an unfortunate example of the kind of thing that should not emanate from any responsible news operation. However, in this situation, one photographer covered a story for two stations' newscasts, and a bad situation became much, much worse. The audiences of two out of three local stations' news saw the faces and heard the names of the victims, in direct violation of a judge's order. The two stations share one news director with one point of view. The community has lost an independent voice illustrated very clearly by the contempt charges facing both KCCN and KCBA. In fact, neither station reported the filing of the contempt charges in any of their newscasts on February 5. The charges were obviously public knowledge enough to make the front page of the local newspaper, but not important enough to make a live newscast. Such censorship is strangely reminiscent of April 24, 1996, when the only local television station to report the shut-down of KCCN was KSBW, the only local English language station not involved in the LMA. It would be difficult to come up with a more blatant example of what this local area has sacrificed since the creation of this LMA.

The General Manager of KCBA is the General Manager of KCCN. This GM sets policy for both stations, hires and fires for both stations, buys and schedules programming for both stations, interfaces with the various local communities on behalf of both stations, and is ultimately the one person responsible for the financial performance of both stations. It would be very difficult, if not impossible, for that individual not to be involved in the pricing of both stations. Even though there are separate sales managers and sales people for the two stations, they all work in the same building and report to the same GM, and at times have shared the same fax machine. Collusion ends up being a part of everyday business without malicious intent on anyone's part.

In summary, many LMA's provide a valuable community service. The KCCN LMA is a worst-case LMA and a total disservice to the Monterey-Salinas market. Allowed to stand, this management agreement will permanently strip the Monterey Peninsula of its only English language television station and the Salinas-Monterey market of an independent editorial voice. As the rules governing LMA's are finalized, it would seem wise to guard against other situations like that involving KCCN. Whether this is done by making LMA's attributable and not allowing ownership of two stations beyond a certain market rank, or by requiring the Commission's approval of each LMA (similar to the requirements for approval of change of ownership of a television station), there must be a safe-guard put in place. Also, it would seem that this is one of those existing small market LMA's that should not be grand-fathered. To allow the current agreement to stand any longer only makes it that much more difficult to re-establish KCCN as a free standing television station.

Sincerely,

Cynthia L. McGillen

Cynthia L. McGillen

SCRIPPS HOWARD

The Monterey County Herald

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TV stations face contempt charges

BY KEN SCHULTZ
Herald Staff Writer

Two Monterey County television stations face contempt of court charges for violating a judge's order prohibiting identification of the victims of two men sentenced last month to life in prison for participating in an Internet child pornography ring.

Superior Court Judge Robert Moody yesterday scheduled a March 7 contempt hearing in Salinas for Salinas-based KCBA and KCCN of Monterey.

KCBA is owned by Ackerley Communications of Seattle, and KCCN is owned by Harron Communications of Fraser, Pa. Both stations have been managed by Ackerley since April.

The news director of both stations, John Freeman, apologized in court yesterday to the judge and the families of the five young victims, age 4 to 10.

Freeman said the violation of the court order was "a clear mistake" during the stations' news coverage of the Jan. 29 sentencing of Ronald Riva of Greenfield, a former Soledad prison guard, and Melton Lee Myers of Santa Rosa, a registered sex offender.

A brief videotaped shot of some parents in the courtroom appeared Jan. 29 on KCBA's 10 p.m. news show. That night, both stations also aired on their news programs a statement made to the judge by Riva in which Riva denied molesting one girl, a 10-year-old whom he identified by her first name.

The mother of the girl, along with the girl's younger sister, who was also among the molestation victims, testified yesterday that both girls were watching a local TV news program following the sentencing because "they wanted to see Mr. Riva get his."

Both girls became upset when the name of the older girl was broadcast, the woman told Moody.

"We live in a very small community. Her name is not a common one," the woman said.

The broadcasts prompted numerous calls to the family from relatives, neighbors and friends who were "outraged" that the family's anonymity had been compromised, she said.

Please see CONTEMPT PAGE A10

Russ Cain/The Herald

ASSISTANT DISTRICT ATTORNEY *Ed Hazel, standing, and John Freeman, news director of both KCBA and KCCN, watch tapes of the disputed newscast.*

FROM PAGE A1

"This has just caused us further distress at a time when we were ready to put this behind us," the woman said.

A contempt citation is being sought against the two stations by Deputy District Attorney Ed Hazel. The stations could be fined $1,500 for each violation, and the judge has wide discretion in imposing other sanctions, Hazel said.

The videotape of the victims' parents was "never intended to appear on the air," Freeman told the judge. "This is something that should never have happened and was a clear mistake."

After hearing from Freeman, Moody said he was convinced that the two stations "had no intention or desire to compromise the identities of the parents and victims. It appears to be negligent conduct, but obviously it hurts" those involved.